

WILLIAM L. WEBSTER

DIGEST
of
Official
Opinions
• 1990 •

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January 1 to December 31, 1990

Subject - Opinion No.

Addressee and Date

CITIES, TOWNS AND VILLAGES:
CITY FUNDS:
CITY PARKS:
No. 34-90

Martha F. Jarman
January 23, 1990

Cities which levy a tax for parks pursuant to Section 90.500, RSMo 1986, may not impose an administrative service fee on the park fund for processing checks and providing accounting services for the park fund.

FILING:
RECORDER OF DEEDS:
RECORDING:
UNIFORM COMMERCIAL CODE:
No. 50-90

W. James Icenogle
February 7, 1990

The user fee specified in Section 59.319, RSMo Supp. 1989, should not be collected when a UCC-1 is merely filed, but such user fee should be collected when a UCC-1 is filed for record or recorded.

ABORTION:
LIBRARIES:
PUBLIC FUNDS:
PUBLIC LIBRARIES:
No. 67-90

Sheila Lumpe
February 7, 1990

Section 188.205, RSMo 1986, does not prohibit libraries (whether public or private which receive public support) from cataloging, housing, or circulating abortion material.

CONSTITUTION:

William Clay, Jr.

GAMBLING:

February 8, 1990

LOTTERIES:

LOTTERY COMMISSION:

No. 53-90

Additional statutory authorization is not necessary for the State Lottery Commission to formulate a lottery game where the prizes are based on the player's predictions on the outcome of professional sporting events.

COOPERATIVE AGREEMENTS:

Douglas Abele

FIRE PROTECTION DISTRICTS:

March 1, 1990

No. 15-90

A fire protection district is authorized to enter into a cooperative agreement with a volunteer fire association incorporated as a not-for-profit corporation.

GRAND JURY:

Mark A. Youngdahl

JURIES-JURORS:

March 19, 1990

PUBLIC RECORDS:

RECORDS:

SUNSHINE LAW:

No. 78-90

The circuit clerk, prosecuting attorney and circuit judge are not required to release to the media and public the names of members of a grand jury.

CORPORATION STOCK:

Henry A. Panethiere

CORPORATIONS:

March 19, 1990

STOCK-CORPORATE:

STOCKHOLDERS:

No. 107-90

Under Section 351.405, RSMo 1986, a dissenting shareholder is not entitled to receive dividends, whether the dividends are regularly scheduled or extraordinary, that are declared after the date on which the vote was taken authorizing the sale or exchange.

MEETINGS:
NOTICES:
SUNSHINE LAW:
No. 97-90

Jan Martinette
March 27, 1990

Pursuant to Section 610.022.2, RSMo Supp. 1989, notice of a closed meeting of a public governmental body must include the time, date and place of the meeting and a reference to the specific statutory exception allowing the meeting to be closed; however, notice of a closed meeting is not required to include a tentative agenda.

FIRE HYDRANTS:
FIRE PROTECTION - FIRE
PROTECTION DISTRICTS:
PUBLIC WATER SUPPLY DISTRICTS:
WATER LINES:
No. 31-90

Bill McKenna
April 5, 1990

A fire protection district has the power under Chapter 321, RSMo, by a properly enacted ordinance to require a public water supply district to include fire hydrants when installing water mains within the fire protection district boundaries or updating or upgrading the water mains.

DEPARTMENT OF PUBLIC SAFETY:
LIQUOR:
No. 58-90

James M. Talent
April 10, 1990

(1) Subsection 2 of Section 311.332, RSMo Supp. 1989, does not prohibit a wholesaler of intoxicating liquor or wine containing alcohol in excess of five percent by weight from meeting lower competing prices and discounts for liquor or wine of the same brand and trade name and of like age and quality as provided in Section 311.336, RSMo 1986, (2) the amended price schedule allowed in Section 311.336 shall be in effect for the calendar month following the amendment as provided in that section, and (3) the lower competing price referred to in Section 311.336 is based on the filed schedule of prices and not temporary price reductions authorized by subsections 2 and 3 of Section 311.332.

AUDITS:
COUNTIES:
COUNTY AUDITOR:
No. 51-90

Jeremiah W. (Jay) Nixon
April 12, 1990

A county auditor of a first class non-charter county is not authorized to conduct an audit of a corporation organized under Chapter 355, RSMo, even if the corporation performs a public function on behalf of the county and has as a primary purpose to enter into contracts with the county and engage in activities carried out pursuant to an agreement with the county.

AMBULANCE DISTRICTS:
CANDIDATES:
ELECTION OF DIRECTORS:
ELECTIONS:
No. 80-90

William J. Hannah
May 11, 1990

Pursuant to Section 190.050.1, RSMo Supp. 1989, if only one candidate files for the office of ambulance district director in an election district, the ambulance district may forego the holding of an election in that election district.

COOPERATIVE AGREEMENTS:
POLICE:
No. 46-90

Branson L. Wood III
May 15, 1990

Political subdivisions within the State of Missouri may enter into mutual aid or cooperative agreements relating to police services with political subdivisions of another state; however, there is no authority for the Missouri political subdivision to confer police authority upon members of the law enforcement agency of the political subdivision located outside the State of Missouri except by commissioning those members.

COUNTIES:
DEPARTMENT OF MENTAL HEALTH:
MENTAL HOSPITAL:
MENTAL RETARDATION:
PUBLIC ADMINISTRATOR:
STATE HOSPITALS:
STATE MENTAL HOSPITALS:
No. 52-90

Thomas W. Marshall
May 30, 1990

The Saline County Public Administrator is not eligible to employ a secretary under the provisions of subsection 2 of Section 473.737, RSMo Supp. 1989.

CONFLICT OF INTEREST:
LEGISLATORS:
REPRESENTATIVES:
SCHOLARSHIPS:
STATE UNIVERSITIES:
UNIVERSITIES:
No. 87-90

David C. Hale
May 30, 1990

Article III, Section 12, of the Missouri Constitution does not prohibit a state representative from accepting student financial aid from a state university if no employment is required, but such section prohibits a state representative from accepting a graduate assistantship which requires employment.

CITIES, TOWNS AND VILLAGES:
FOURTH CLASS CITIES:
LIQUOR:
No. 33-90

Doyle Childers
June 11, 1990

1) The City of Lakeview, a fourth class city of less than five hundred inhabitants, pursuant to Section 311.090, RSMo 1986, can hold an election on the question of whether the sale of intoxicating liquor, with certain exceptions, by the drink at retail for consumption on the premises where sold shall be permitted, 2) can regulate the sale of intoxicating liquor provided the regulations are in harmony with state law and 3) is not authorized to tax intoxicating liquor except as provided in Section 311.220, RSMo 1986.

CITIES, TOWNS AND VILLAGES:
CITY UTILITIES:
CONSTITUTIONAL CHARTER CITIES:
WATERWORKS:
No. 65-90

Thomas Macdonnell
June 25, 1990

A constitutional charter city pursuant to Section 91.600, RSMo 1986, may acquire lands by the power of eminent domain in a county other than the county where the city is situated to dam up a river to form a water reservoir as a source of water supply for the city.

MENTAL HEALTH, DEPARTMENT OF:
STATE LEGAL EXPENSE FUND:
No. 112-90

Keith Schafer, Ed.D.
June 29, 1990

The trustees of the Missouri Family Trust Fund are entitled to coverage by the State Legal Expense Fund as provided in Section 105.711, RSMo Supp. 1989.

CONFLICT OF INTEREST:
OFFICERS:
OFFICIALS:
ST. LOUIS CITY:
No. 143-90

James R. Moody
July 23, 1990

A commissioner of the St. Louis Regional Convention and Sports Complex Authority established under Sections 67.650 through 67.658, RSMo Supp. 1989, is not prohibited from serving as a member of the authority because he is employed by a securities firm submitting a proposal for underwriting bonds issued by the authority; however, such commissioner may not participate in the process of selecting the underwriter.

CRIMES:
CRIMINAL LAW:
DEPARTMENT OF CORRECTIONS:
HANCOCK AMENDMENT:
PROSECUTING ATTORNEY:
No. 108-90

Bob F. Griffin
Phil Tate
July 26, 1990

Prosecution by the Dekalb County Prosecuting Attorney of correctional facility inmates who violate Missouri criminal statutes does not involve a new or increased activity or service for which state funds must be appropriated under Article X, Section 21, of the Missouri Constitution.

JUVENILE OFFICERS:
OFFICE OF ADMINISTRATION:
WORKERS' COMPENSATION:
No. 25-90

James R. Moody
August 7, 1990

Juvenile officers, appointed pursuant to Section 211.351, RSMo 1986, and funded by the State of Missouri pursuant to Section 211.393, RSMo Supp. 1989, are state employees for purposes of the workers' compensation laws; however, other juvenile court personnel are not state employees for purposes of the workers' compensation laws.

COLLECTOR'S DEEDS:
COUNTY COLLECTORS:
DELINQUENT TAX SALES:
TAX DEEDS:
No. 61-90

W. James Icenogle
August 10, 1990

Purchasers of property at third offering tax sales are entitled to receive a collector's deed without awaiting any period of redemption and are exempt from the requirements of Section 140.405, RSMo Supp. 1989.

AUTOMOBILE DEALER:
BONDS:
MOTOR VEHICLES:
SURETY BOND:
No. 41-90

Christopher Graham
August 27, 1990

(1) Motor vehicle dealer bonds required by Section 301.560, RSMo Supp. 1989, do not provide coverage for activities occurring outside the State of Missouri; and (2) "any aggrieved party" as used in Section 301.560, RSMo Supp. 1989, includes licensed motor vehicle dealers and automobile auctions as well as purchasers.

BOARD OF TRUSTEES:
FIRE PROTECTION DISTRICT:
INCOMPATIBILITY OF OFFICE:
VILLAGES:
No. 42-90

M. Douglas Harpool
September 12, 1990

The same person may not simultaneously serve as a director of a fire protection district and as trustee of a village located within that fire protection district; however, an incumbent director of a fire protection district can be a candidate for the office of trustee of a village located within that fire protection district.

ATTORNEYS:
CONFLICT OF INTEREST:
COUNTIES:
NEPOTISM:
PUBLIC ADMINISTRATOR:
No. 88-90

Stanley M. Thompson
September 17, 1990

(1) It would be a violation of Article VII, Section 6 of the Missouri Constitution, the nepotism provision, for the Ray County Public Administrator to retain in her official capacity her brother-in-law who is an attorney, and (2) it would not be a violation of Article VII, Section 6 of the Missouri Constitution or Sections 105.450 et seq., RSMo, for the public administrator to contract with an abstract corporation whose stock is wholly owned by her brother-in-law.

SCHOOLS:
SCHOOL DISTRICTS:
TEACHERS:
TUITION:
No. 56-90

Jeff W. Schaeperkoetter
September 28, 1990

Section 168.151, RSMo 1986, prohibits a school district from collecting from a teacher employed by the district tuition for a non-resident child of the teacher to attend school in the district.

DEPUTY JUVENILE OFFICERS:
JUVENILE OFFICERS:
STATE LEGAL EXPENSE FUND:
No. 39-90

Joe Moseley
October 9, 1990

Deputy juvenile officers and juvenile detention facility personnel are not covered by the State Legal Expense Fund, Section 105.711, RSMo.

COUNTIES:
COUNTY ROADS:
COUNTY SALES TAX:
TAXATION - GENERAL:
TAXATION - SALES TAX:
No. 70-90

Stanley M. Thompson
October 9, 1990

Section 50.515, RSMo 1986, does not authorize a county to impose an administrative service fee on the special trust fund in which the proceeds from the capital improvements sales tax authorized by Section 67.700, RSMo 1986, are deposited even though the sales tax was adopted for purposes of road and bridge construction, repairs, and other general road and bridge purposes.

CIRCUIT COURT:
STATE AUDITOR:
STATE AGENCY:
No. 170-90

Margaret Kelly, CPA
October 9, 1990

The State Auditor is authorized to audit the Sixteenth Judicial Circuit pursuant to Article IV, Section 13, Missouri Constitution, and Section 29.200, RSMo 1986.

ST. LOUIS CITY:
STATE LEGAL EXPENSE FUND:
No. 179-90

James R. Moody
October 26, 1990

The St. Louis Regional Convention and Sports Complex Authority created under Section 67.650, et seq., RSMo Supp. 1989, and its members are not covered by the State Legal Expense Fund, Section 105.711, RSMo.

DEATH CERTIFICATES:
DEPARTMENT OF HEALTH:
ECONOMIC DEVELOPMENT, DEPT. OF:
FUNERAL DIRECTORS:
VITAL STATISTICS:
No. 47-90

Carl M. Koupal, Jr.
November 19, 1990

If the cause of death can be determined within seventy-two (72) hours after death, Section 193.175, RSMo 1986, requires a completed death certificate to be filed with the local registrar before a body is cremated in the State of Missouri.

CIRCUIT CLERKS:
CIRCUIT COURT:
COUNTY JAIL:
COUNTY SALES TAX:
JAELS:
PROSECUTING ATTORNEY:
SHERIFFS:
TAXATION - GENERAL:
TAXATION - COUNTY SALES TAX:
No. 133-90

R. Kevin Barbour
November 29, 1990

A third class county may expend sales tax revenue collected pursuant to Section 67.582, RSMo Supp. 1989, for a facility to house associate circuit court courtrooms, the circuit clerk's office, the county prosecuting attorney's office, the county sheriff's office, and the county jail.

CONFLICT OF INTEREST:
LOBBYING:
No. 197-90

Richard G. Callahan
November 29, 1990

The phrase "which exceeds fifty dollars on any one occasion or instance or two hundred fifty dollars in the aggregate for any reporting period" in Section 105.470.4(2), RSMo, as enacted by Senate Committee Substitute for House Committee Substitute for House Bills Nos. 1650 and 1565, 85th General Assembly, Second Regular Session (1990) modifies the terms "expenditure, gift, payment, line of credit or loan . . . including a service or anything of value"

CITIES, TOWNS AND VILLAGES:
CONFLICT OF INTEREST:
LOBBYING:
No. 150-90

Chuck Wooten
December 11, 1990

(1) The provisions of Section 105.483(8), RSMo, as enacted by Senate Committee Substitute for House Committee Substitute for House Bills Nos. 1650 and 1565, 85th General Assembly, Second Regular Session (1990), apply to administrative boards of constitutional charter cities such as Springfield, Missouri, when such boards administer the affairs of municipal utilities and have authority to make contracts and enact rules; (2) a city council does not have authority to designate persons subject to reporting requirements under Section 105.483(8) by virtue of the provisions of Section 105.483(7).

COMPENSATION:
FIRE PROTECTION DISTRICTS:
No. 198-90

Wayne Goode
December 26, 1990

Pursuant to the provisions of Article VII, Section 13 of the Missouri Constitution, no current member of the board of directors of a fire protection district is entitled to the increase in attendance fees authorized by Section 321.190, as amended by Conference Committee Substitute for Senate Substitute for Senate Committee Substitute for House Bill No. 1395 and House Bill No. 1448, 85th General Assembly, Second Regular Session (1990), until he assumes a new term of office.

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